

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-208-C - ORDER NO. 2002-724
OCTOBER 10, 2002

IN RE: Application of Aspire Telecom, Inc. for a)	ORDER GRANTING
Certificate of Public Convenience and)	CERTIFICATE FOR
Necessity to Provide Local Exchange and)	LOCAL AUTHORITY,
Exchange Access Telecommunications)	GRANTING AND
Services Within the State of South Carolina)	DENYING CERTAIN
)	WAIVERS, AND
)	ESTABLISHING
)	GENERIC DOCKET

2002-10-10
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This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Aspire Telecom, Inc. ("Aspire" or the "Company") requesting a Certificate of Public Convenience and Necessity to provide resold local exchange and exchange access telecommunications services throughout the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280(B) (Supp. 2001) and Section 253 of the Telecommunications Act of 1996.

By letter, the Commission's Executive Director instructed Aspire to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The proposed Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. Aspire complied with this instruction and provided the Commission

with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition (“SCTC”).

Counsel for SCTC filed with the Commission a Stipulation in which Aspire stipulated that it would seek authority in non-rural local exchange (“LEC”) service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until Aspire provided written notice of its intent prior to the date of the intended service. Aspire also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Aspire agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Aspire to provide local services provided the conditions contained in the Stipulation are met. The Stipulation was entered into the evidence of the hearing, and the Staff requested that the Stipulation be approved by the Commission. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on September 26, 2002, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Mignon Clyburn, Chairman, presided. Aspire was represented by D. Larry Kristinik, Esquire. F. David Butler, General Counsel, represented the Commission Staff. R. Adam Kane, President of the Company, appeared and testified on behalf of the Company on direct and rebuttal. The Staff presented the testimony of David S. Lacoste.

Mr. Kane described the nature of Aspire's proposed service offering within the State of South Carolina and provided testimony regarding Aspire's financial, managerial, and technical ability to provide telecommunications services in South Carolina. The record reveals that Aspire is a North Carolina corporation, registered to do business in South Carolina as a foreign corporation.

The Company intends to offer resold local exchange and exchange access telecommunications services to business and residential customers in the State of South Carolina. The record reveals that Aspire initially plans to provide a full range of local telecommunications services. Aspire also intends to provide local telecommunications services to consumers who have been disconnected by the incumbent local exchange carrier or by competitive local exchange carriers for non-payment, or who have failed to meet such carrier's applicable credit standards.

The testimony further reveals that Aspire has never been the subject of an investigation by a state regulatory body or by the Federal Communications Commission. Mr. Kane testified that Aspire was negotiating interconnection agreements with incumbent local exchange carriers at the time of hearing.

Mr. Kane testified that Aspire's team of qualified personnel has significant experience in performing the technical functions necessary to provide local exchange and exchange access service.

Regarding the Company's financial condition, Mr. Kane testified that Aspire is financially qualified to provide resold local exchange and exchange access telecommunications services in South Carolina. According to the record, the Company

has access to the financing and capital necessary to conduct its telecommunications operations.

Aspire requested a waiver of S.C. Code Ann. Regs. 103-631 (1976) so that the Company will not be required to publish local exchange directories. According to the record, Aspire will make arrangements with the incumbent local exchange carriers whereby the names of Aspire's customers will be included in the directories published by the incumbent local exchange carriers. The Company also maintains its books of accounting in accordance with Generally Accepted Accounting Principles (GAAP). Further, Aspire requests that it be exempted from maintaining its records inside the State of South Carolina, as is required by Regulation 103-610. Also, Aspire requests that it be exempted from various reporting requirements, particularly those listed in Regulations 103-612 and 103-618.

Aspire also requests a variance from Regulation 103-622.2 concerning late fees. The Company wants to impose a \$10 late fee instead of meeting the required limit of 1.5% on any unpaid balance. Additionally, Aspire seeks waiver of Regulation 103-633, which requires 5 days written notice before cut-off of service.

Company President Kane testified that it is the Company's practice to allow its customers a 7 day late, grace period after the customer's 30 days of paid service. Kane states that, without the proposed late fee, Aspire would not be able to purchase additional service days from the incumbent carrier that would allow for the grace period. Further, Kane maintains the proposed late fee structure allows it to maintain continuous service to those who are unable to make a renewal payment exactly on time, and that the flexibility

of payment avoids higher fees for restoration of service. Kane also requests waiver of Commission Regulation 103-633 which requires a written notice be given five days before disconnection of service. The Company states that, because its services are prepaid, the customer has already paid for the service being provided and, therefore, cannot be late with respect to such payment. Accordingly, the Company believes that a typical late notice is not required. Aspire does provide notice to the customer that service will be suspended or discontinued by way of a reminder notice sent approximately fourteen (14) days prior to the expiration of the prepaid month of service. The reminder notice informs the customer that service will be suspended if the fee for the next month's service is not timely paid.

The Commission Staff presented the testimony of David S. Lacoste, an Engineer (Associate) within the Commission's Utilities Department. Lacoste indicated Staff's agreement with several proposed waivers of Commission Regulations, and its opposition to the proposed waivers having to do with the waiver of Commission Regulations 103-622.2 and 103-633. With regard to both of these regulations, Staff believes that the waivers should be denied, in order to provide consistent regulatory treatment and rules enforcement. Further, Lacoste stated that it would be burdensome from an enforcement standpoint to waive these regulations for this Company only.

On a practical note, Lacoste stated that Regulation 103-622.2 clearly states that a late fee may not exceed 1.5% of the unpaid balance brought forward. A \$10 late fee would equate to 18.5% on a \$54 account, according to Lacoste. Lacoste therefore believes that the fee is excessive. With regard to Regulation 103-633, Lacoste believes

that the Company's allowance of a 7 day grace period does not coincide with the provisions of Regulation 103-633. Lacoste suggested that the company structure the customer's billing cycle so that the payment due dates and cut-off dates are arranged so that a customer gets no more or no less than a full month's worth of prepaid service. This way a notice in compliance with the Commission's regulations could be sent five days before the scheduled cut-off after the 30th day, if no payment is made for the following month. The five days between the 25th and 30th day would then be the "grace period." In sum, Staff witness Lacoste opposed the waiver of both Regulations 103-622.2 and 103-633.

Company witness Kane filed rebuttal to the Staff testimony. In short, Kane states that even though a \$10 late fee may be more than the 1.5% limit, the 1.5% limit does not account for the realities of Aspire's status as a prepaid provider of resold services. This fee is a source for recovery of the costs of service days purchased for customers who pay late. Aspire also argues that their grace period gives greater flexibility with a group of customers that need that flexibility. The additional notice, as required by the regulation, would increase Aspire's administrative costs. Aspire argues that its experience in North Carolina shows that Aspire's procedures work, and have allowed Aspire to keep costs down.

Although we understand Aspire's points, we must reject the requested waivers of Commission Regulations 103.622.2 and 103-633, for reasons that will be explained below.

Upon consideration of the application and the record from the hearing, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Aspire is organized as a corporation under the laws of the State of North Carolina, and is recognized as a foreign corporation under the laws of the State of South Carolina.

2. Aspire wishes to provide local exchange and exchange access services within the State of South Carolina.

3. The Commission finds that Aspire possesses the technical, financial, and managerial resources sufficient to provide the service requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 2001).

4. The Commission finds that Aspire's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 2001).

5. The Commission finds that Aspire will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 2001).

6. The Commission finds that Aspire will provide services which will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 2001).

7. The Commission finds that the provision of local exchange service by Aspire "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 2001).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Aspire to provide competitive intrastate local exchange and exchange access services within the State of South Carolina. The terms of the Stipulation between Aspire and the SCTC (attached hereto as Exhibit 1) are approved and adopted as a portion of this Order. Any proposal to provide local services to rural service areas is subject to the terms of the Stipulation. In accordance with the Stipulation, Aspire may not provide any local service to a customer located in a rural incumbent LEC's service area, unless or until Aspire provides such rural incumbent LEC and the Commission, written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. The Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while it conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon a showing of good cause. It is specifically provided that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Order in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications as they may be entitled. If, after notice from Aspire that it intends to serve a customer located in a rural incumbent LEC's service area, and the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or if the Commission institutes a

proceeding of its own, no service may be provided by Aspire in a rural incumbent LEC's service area pursuant to this Order without prior and further Commission approval.

2. Aspire shall file, prior to offering local exchange and exchange access services in South Carolina, its final tariff of its service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters.

3. Aspire shall resell or provide the services of only those companies authorized to provide telecommunications services in South Carolina by this Commission.

4. Aspire shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

5. The waiver of reporting requirements is denied. Aspire shall file annual financial information in the form of annual reports and gross receipt reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Aspire shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The form the Company shall use to file annual financial information with the Commission can be found at the Commission's web site at www.psc.state.sc.us/forms. This form is entitled "Annual Report for Competitive Local Exchange Carriers". Additionally, pursuant to the Commission's regulations, the Company shall file a CLEC Service

Quality Quarterly Report with the Commission. The proper form for this report is Form #110 and can be found at www.psc.state.sc.us/forms/default.htm.

6. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Aspire to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, Aspire shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

7. The Company shall, in compliance with Commission regulations, designate and maintain authorized utility representatives who are prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests

and repairs. In addition, the Company shall provide to the Commission in writing the names of the authorized representatives to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Aspire shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form the Company shall use to file this authorized utility representative information can be found at the Commission's website at www.psc.state.sc.us/forms. This form is entitled "Authorized Utility Representative Information." Further, the Company shall promptly notify the Commission in writing if the representatives are replaced. Aspire shall also file with the Commission a copy of its general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2001).

8. Aspire shall file annually the Intrastate State Universal Service Fund (USF) worksheet due August 15 for calendar and fiscal year ending companies.

9. Aspire requested waivers from certain other Commission regulations and requirements. Specifically, Aspire requested a waiver from the requirement found in Rule 103-631 to publish and distribute local exchange directories. The Company also requested permission to use GAAP. The Commission grants the request for waiver from the requirement to publish directories as Aspire has indicated that it will contract with the incumbent local exchange company to include the customers of Aspire in the directory listing of the ILEC directory. Further, the Commission grants Aspire's request that it be allowed to keep its books and records in accordance with GAAP rather than the USOA. 900 or 900-type access and placement of toll calls by customers would not be allowable

over the Company's lines under the Certificate granted by us herein, which is for local calling only, unless further authority is sought by the Company. Further, a waiver is granted of Regulation 103-610, the requirement that the Company keep its books and records inside the State of South Carolina.

10. The requested waivers of Regulations 103-622.2 and 103-633 are denied, based on the testimony of Staff witness Lacoste. We agree that the proposed \$10 late fee does not comport with the maximum 1.5% late fee prescribed by 103-622.2, and we are not convinced that this regulation should be waived at this time. We believe that the 1.5% maximum places a valuable limitation on what companies can charge their late-paying customers. Likewise, we do not believe that we should waive the Notice requirement prior to termination at this time. We hold that this regulation provides valuable protection against termination without notice, and limits the times during which service can be terminated. Further, we agree with Staff witness Lacoste that it would be burdensome to administer these two waivers for Aspire only, since Aspire's practice would not be in conformance with the rest of the regulated telecommunications community.

However, in denying these waivers, we would say that this proceeding and the Company witness has made it clear to us that there may be some legitimate differences in the regulatory needs of companies offering pre-paid local service and other local exchange carriers. Accordingly, we do hereby order the Commission Staff to establish a generic docket to address the issues raised by the requested waivers concerning late fees and procedures for termination of service and other issues related to the provision of prepaid local exchange services by competitive local exchange carriers. We will be

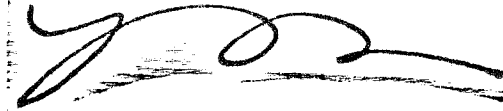
inquiring into the matters raised by Aspire, and into other matters related to pre-paid local service.

11. The Federal Communications Commission (FCC) in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2001, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to the assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 2, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. This Company must comply with the applicable mandates. For complete information on compliance with this FCC and Commission requirement, go to the Commission's website at www.psc.state.sc.us/forms.

12. Aspire is directed to comply with all Commission regulations, unless a regulation is specifically waived by the Commission. Aspire shall file its final tariff, which shall be in conformance with any matters discussed with the Commission Staff, within thirty (30) days from its receipt of this Order.

13. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

A handwritten signature in black ink, appearing to read 'M. Clyburn', written over a horizontal line.

Mignon L. Clyburn, Chairman

ATTEST:

A handwritten signature in black ink, appearing to read 'Gary E. Walsh', written over a horizontal line.

Gary E. Walsh, Executive Director

(SEAL)

BEFORE

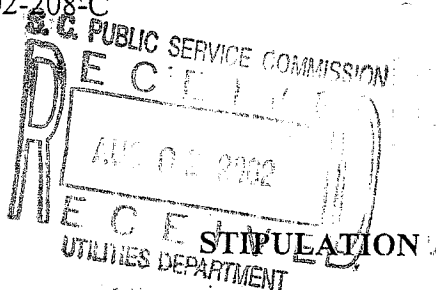
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

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POSTED
008-2-02

Docket No. 2002-208-C

Re: Application of Aspire Telecom, Inc. for a)
Certificate of Public Convenience and)
Necessity to Provide Local Exchange and)
Exchange Access Telecommunications)
Services in the State of South Carolina)
_____)



The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Aspire Telecom, Inc. ("Aspire") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Aspire's Application. SCTC and Aspire stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Aspire, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.
2. Aspire stipulates and agrees that any Certificate which may be granted will authorize Aspire to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.
3. Aspire stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.
4. Aspire stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and

OK [Signature]
OK [Signature]

until Aspire provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Aspire acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Aspire stipulates and agrees that, if Aspire gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Aspire will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Aspire acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Aspire, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Aspire agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. Aspire hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 15th day of July,
2002.

Aspire Telecom, Inc.:

R. Adam Kane
President

South Carolina Telephone Coalition:

Margaret M. Fox
M. John Bowen, Jr.
Margaret M. Fox
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(803) 799-9800

Attorneys for the South Carolina Telephone
Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

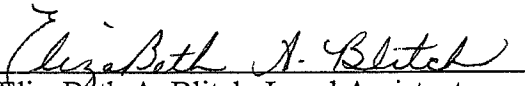
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Services in the State of South Carolina)
_____)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blitch, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

D. Larry Kristinik, Esquire
Nelson Mullins Riley Scarborough, LLP
Post Office Box 11070
Columbia, South Carolina 29211


ElizaBeth A. Blitch, Legal Assistant
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July 30, 2002

Columbia, South Carolina